

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Michael B. and Stacey L. Sherman,

Petitioners-Appellants,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

Docket No. 09-77-1235

Parcel No. 312/00678-762-000

On June 2, 2010, the above captioned appeal came on for consideration before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Appellants Michael B. and Stacey L. Sherman, were self-represented and requested the appeal proceed without a hearing. They submitted evidence in support of their position. The Polk County Board of Review designated Assistant County Attorneys Ralph Marasco, Jr. and David Hibbard as its legal representatives and submitted evidence in support of its decision. The Appeal Board having reviewed the entire record, and being fully advised, finds:

Findings of Fact

The Shermans are the owners of a residentially classified, single-family residence located at 4731 105th Court, Urbandale, Iowa. The property is a one-story, bi-attached townhouse built in 1998. It has 1444 square feet of total living area with a full basement and 700 square feet of living-quarter-quality basement finish. Other features include a three-car attached garage and a 174 square-foot deck area. The site is 3975 square feet.

The January 1, 2009, total assessment of the Sherman's property was \$212,300 allocated as follows: \$44,400 in land value and \$167,900 in improvement value. In a June 5, 2009 letter, the Board

of Review notified the Shermans of a board action increasing their assessment to a total value of \$227,400 allocated as follows: \$44,400 in land value and \$183,000 in building value. The letter indicated the proposed action was due to correcting a clerical or listing error. The Sherman's timely responded to the Board of Review's proposed increase. In the June 12, 2009, letter, the Shermans protested on the grounds of inequity and over-assessment by citing both sales and assessed values of other similar properties. The Sherman's asserted the market value of the property was \$208,000 or lower. Essentially, the Sherman's claims were based on Iowa Code sections 441.37(1)(a) and 441.37(1)(b). The Board of Review denied the protest again citing the "assessed value of this property was changed in order to correct a clerical or listing error in the assessment." The Appraiser Analysis summary provided in the certified record identified the error requiring correction as "addition of basement finish." The Shermans did not deny this correction.

The Sherman's then appealed to this Board asserting the property is inequitably assessed and over-assessed. They claimed the market value of the subject property is \$211,000 allocated as follows: \$44,400 in land value and \$166,600 in improvement value. The Sherman's also asserted a claim of error to this Board, under section 441.37(1)(d), but they did not identify the error and instead stated the property was assessed too high, thus again asserting a market value claim.

To the Board of Review, the Shermans offered six properties they considered comparable to theirs. The subject property is located in the Crystal Creek II plat, Urbandale, Iowa. Two of the six properties submitted for comparison are located in the Crystal Creek I plat. The addresses of these two properties are 10415 and 10601 Oakwood Drive. Both are similar one-story, attached townhouses.

According to the property record cards, 10415 Oakwood has 1331 square feet of total living area, and 10601 Oakwood has 1469 total square feet of living area. Information about basement finish, or lack thereof, was not on the property record cards. The property located at 10415 Oakwood has a 2009 assessed value of \$211,300, but sold in March 2005 for \$240,000. We consider the 2005 sale

date too distant to be indicative of the January 1, 2009, value. The property located at 10601 Oakwood has a 2009 assessed value of \$204,200, but sold in August 2008 for \$207,000. We note this August 2008 transfer was from a trust and may not be considered a normal transaction because a trust may not be a willing seller under Iowa Code section 441.21(1)(b), and we lack information to reach a conclusion of whether this sale reflects market value.

The other four properties supplied for comparison by the Shermans are all located in the Diamond Brooke Townhomes Plat 1 development in the city of West Des Moines, Dallas County. The addresses are 6980 Cody Drive Units 17, 54, 41, and 45. In their July 8, 2009, letter, the Shermans indicate these four properties have the same floor plan as their property and were built by the same builder, with the only differences being year built, the amount of finished square footage, and sale price. Because none of the properties are in Polk County, and are instead located in Dallas County, they cannot be used for equity comparables.

However, any sales of these properties can be considered for Shermans' claim that the property is over-assessed.

Only two of these four properties have sold since 2005. Unit 41, which has a 2009 assessment of \$227,860, sold in January 2006 for \$265,000. Unit 45, which has a 2009 assessment of \$220,300, sold in April 2007 for \$258,000. We consider both transactions to be too dated to reflect a value for January 1, 2009.

The Sherman's offered a seventh property for comparison. It is also located at 6890 Cody Drive Unit 9, West Des Moines. This property is located in the same development as the Diamond Brooke Townhomes Plat 1 properties and presents the same problems as the others. It cannot be considered as an equity comparable because it is in Dallas County, and its most recent transfer was in 2005.

The Polk County Board of Review submitted an appraisal of the subject property completed by Norman (Mike) Swaim. Swaim completed an interior inspection of the subject property on May 13, 2010, and arrived at an opinion of value, effective January 1, 2009. He considered four properties for comparison, all located within less than 0.2 miles. Based upon the photos in the appraisal, all four properties appear to have been built by the same developer. All are located in Urbandale and within Polk County, and all four sold between May 2008 and August 2008. Sale prices range from \$203,500 to \$225,000. Swaim indicates that sale four, which sets the lower end of the pre-described sale price range had a “‘subject to sale’ clause on a property that was located in the ‘South of Grand’ area. The agent said that they accepted the low offer after being on the market for only 8 days so they did not lose the house they were trying to purchase so little weight was given to this comps.” Disregarding this sale, the sales price range tightens to \$220,500 to \$225,000. Only considering these three comparables, the adjusted value range is \$215,500 to \$231,200. From within this range, Swaim selected a final opinion of value, as of January 1, 2009, of \$223,000. We find the Swaim appraisal to be the most credible evidence presented, demonstrating the subject is over-assessed.

We find that sufficient evidence has been provided to demonstrate the subject is assessed for more than authorized by law.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only

those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The Sherman's provided seven properties they considered as equity comparables, but five of the seven properties were located in Dallas County rather than Polk County, which is the taxing jurisdiction of the appeal, and cannot be considered for equity purposes. *Maytag v. Partridge*, 210 N.W.2d 584, 594-595 (Iowa 1973). The remaining two properties were not sufficient to demonstrate inequity as no market value was determined for comparison to their assessed values.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277

(Iowa 1995). The sales provided by the Sherman's were several years before the assessment date, and therefore, were not reliable indicators of the subject property's market value for the January 1 assessment. However, the appraisal provided by the Polk County Board of Review supports the Sherman's claim that the subject property is over-assessed.

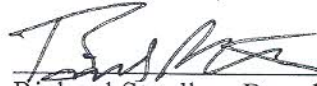
THE APPEAL BOARD ORDERS that Sherman's property, located at 4731 105th Court, Urbandale Iowa, assessment be modified to a total value of \$223,000; representing \$44,400 in land value and \$178,600 to the improvements as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

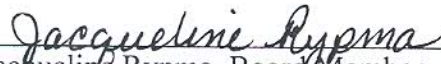
Dated this 17 day of June, 2010



Karen Oberman, Board Chair



Richard Stradley, Board Member



Jacqueline Rypma, Board Member

Cc:

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AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>6-17</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>[Handwritten Signature]</i></u>